
(1999) 09 OHC CK 0015

In the Orissa High Court

Case No : S.J.C. No's. 133, 139, 140, 141, 142, 143, 144, 145 and 146 of 1998

State of Orissa

APPELLANT

Vs

I.D.L. Chemicals (P.) Ltd.

RESPONDENT

Date of Decision : 07-09-1999

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 24, 24(2)

Citation : (2000) 118 STC 475

Hon'ble Judges : A. Pasayat, Acting C.J.; B.P. Das, J

Bench : Division Bench

Advocate : L. Pengari, for the Appellant; Indrajit Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

A. Pasayat, Ag. C.J.

1. Applications for reference u/s 24(1) of the Orissa Sales Tax Act, 1947 (in short, "the Act") having been refused, the present applications u/s 24(2) of the Act have been filed. Since identical disputes are involved, this order shall govern each of the cases under consideration.

2. The assessment years involved are 1976-77, 1977-78 to 1983-84 and 1990-91. While disposing of the appeals filed u/s 23 of the Act, the Orissa Sales Tax Tribunal (in short, "the Tribunal") upheld the orders passed by the Assistant Commissioner of Sales Tax, Sundargarh Range, whereby the assessments made Under Rule 12(5) of the Central Sales Tax (Orissa) Rules, 1957 (in short, "the Orissa Rules") read with the Central Sales Tax Act, 1956 (in short, "the Central Act") for all the aforementioned period except for the assessment year 1990-91 for which the assessment was set aside for fresh adjudication.

3. Background facts relevant to be noted for the purpose of these cases are as follows :

The assessee, I.D.L. Chemicals Ltd. (presently known as I.D.L. Industries Ltd.)

manufactures industrial explosives and accessories with its head office at Hyderabad in the State of Andhra Pradesh, and factory at Rourkela in the State of Orissa. Sales are effected both inside the State of Orissa and in course of inter-State trade and commerce. Apart from the sales, goods manufactured in its factory are despatched to various places outside the State of Orissa. Originally the assessing officer on examination of accounts noted for the periods 1977-78 to 1983-84 that the assessee had sold a major portion of its products to Government undertakings, namely, Coal India Ltd., and National Mineral Development Corporation. It was observed in those proceedings that the goods in question had moved from the factory at Orissa to outside consignment agents for storing in their magazines on the basis of supply orders of the aforesaid parties and the consignment agents had no right to dispose of the goods in any other manner except acting as conduit. The transactions were held to be in course of inter-State sales, and accordingly tax was levied, and extra demands were raised. The matter has come before this Court in applications u/s 24(2) of the Act. The applications were filed by the petitioner. By judgment dated February 11, 1992, in S.J.C. Nos. 2 to 8 of 1989, this Court directed fresh assessment, by remanding the matter to the assessing officer. Directions to the assessing officer were, inter alia, (i) to examine the terms of the letter relating to insurance when the goods moved from Orissa to find out as to who bears the said charges ; (ii) to examine if on account of diversion of the goods before it is supplied to the collieries, there would be breach of contract, and (iii) to examine the quotations themselves and minutes of discussion which culminated with the aforesaid supply orders, for arriving at the conclusion on the question of inter-State sale. Thereafter the assessing officer on examination of the documents and after conducting enquiry from Western Coal Field Ltd., a subsidiary of Coal India Ltd., as well as the consignment agent Abdulhusan M. Alaboxji at Nagpur, held the transactions effected by the consignment agents with the Coal India Ltd., and National Mineral Development Corporation to be sales in the course of inter-State trade and commerce and in the absence of valid declarations levied tax at the appropriate rate. In the first appeal the Assistant Commissioner of Sales Tax while holding that the despatches made by the assessee to the consignment agents were branch transfers coming u/s 6A of the Central Act set aside the assessments for these years with a direction to contact the office of the Coal India Limited at Calcutta in order to verify the quotations and minutes of discussion culminating with the supply orders for arriving at an independent conclusion on the question of inter-State sale. Being aggrieved by the aforesaid order of the Assistant Commissioner, the assessee filed appeals before the Tribunal which were numbered as S.A. Nos. 5(C) to 11(C) of 1996-97. For assessment year 1976-77, the Sales Tax Officer disallowed the claim for concessional rate of tax on Rs. 2,87,001.59 for want of valid declarations in form "C". He also disallowed a sum of Rs. 2,86,75,597.97 claimed as stock transfer to its consignment agents at different places outside the State in respect of sales ultimately made to Coal India Ltd., and National Mineral Development Corporation holding the same as sales in the course of inter-State trade and

commerce. Against the said order of assessment, assessee preferred first appeal. The Assistant Commissioner of Sales Tax confirmed the assessment. The said order was challenged before the Tribunal which set aside the assessment and remanded the matter with certain directions to the assessing officer for reassessment. In the reassessment, the Sales Tax Officer keeping in view the direction given by this Court rendered in respect of the assessment years 1977-78 to 1983-84, as referred to above, held that the sales made in respect of public undertakings like National Mineral Development Corporation Limited, coal mines authorities and Coal India Limited were in the course of inter-State trade and commerce and accordingly disallowed the claim of stock transfer. He, however, allowed concessional rate of tax on a portion of the sales on resubmission of corrected declaration forms. In first appeal, the Assistant Commissioner accepted the claim of stock transfer and allowed exemption on that score. The Revenue preferred appeal before the Tribunal against the aforesaid order of the Assistant Commissioner which was numbered as S.A. No. 22(C) of 1996-97. For the assessment year 1990-91 the assessing officer found that the petitioner failed to produce declarations in form "C" for Rs. 85,66,544.96 out of total claim of Rs. 5,39,40,196.61, in respect of concessional rate of tax. It was also noticed that documents like copies of the agreements, bill of lading towards export sales for Rs. 17,79,485.25 out of total claim of exemption Rs. 31,65,333.24 were not produced. Accordingly he levied tax on the said amount. Freight charges to the extent of Rs. 24,63,132 claimed as deduction were disallowed on the ground that same formed inward freight includible in sale price. The assessing officer found that the assessee had claimed exemption of Rs. 15,04,56,496.83 towards transfer of stock to the consignment agents for sales outside the State to different collieries, and the goods had moved from the factory at Orissa specifically for satisfying the requirement of Coal India Ltd., as a result of prior contract with it, for delivery to different collieries. Accordingly, it was observed that the transfer made to the consignment agents were in the nature of inter-State sales within the ambit of Section 3(a) of the Central Act. On such findings tax was levied on the entire amount claimed as stock transfer including estimated freight on such transfer. In first appeal, the Assistant Commissioner found that the assessee was not given reasonable opportunity to produce the wanting declaration form "C" in support of claim of concessional rate of tax, and necessary documents in respect of sales claimed as export sales. On such observations, he accepted the declarations in form "C" which were produced before him, and directed the Sales Tax Officer to consider those declarations in order to allow the claim if they are otherwise found to be in order. With regard to claim of export sale, he directed the assessing officer to allow further opportunity to the assessee for production of necessary documents in support of the claim of exemption. He also allowed a sum of Rs. 24,63,132 separately charged in the bills towards freight.

So far as claim of stock transfer is concerned, he found that there was no evidence linking the movement of goods to the magazines outside the State with

a concluded sale and allowed the claim of branch transfer with a direction to produce necessary evidence for that portion of the branch transfer for which declarations in form "F" were wanting at the time of assessment. Accordingly the matter was remanded for reassessment. Said order of the Assistant Commissioner was assailed before the Tribunal by the Revenue in S.A. No. 23(C) of 1996-97.

4. On consideration of rival contentions raised by the parties before it, following points were taken up for consideration by the Tribunal :

(i) Whether the transactions in respect of all the years under appeal are stock transfers made to the consignment agents of outside the State or inter-State sales u/s 3(a) of the Central Sales Tax Act ?

(ii) Whether freight charges include sale price in respect of the assessment year 1990-91 ?

(iii) Whether the learned Assistant Commissioner of Sales Tax is justified to allow opportunity for production of wanting documents relating to export sales and to allow acceptance of declarations in form "C" produced before him after verification by the Sales Tax Officer ?

5. So far as the first issue is concerned, the Tribunal referred to certain findings and observations recorded by this Court and the Full Bench of the Tribunal by its order dated January 30, 1995 passed in S.A. Nos. 33 and 84(C) of 1994-95 relating to assessment year 1989-90 subsequent to the judgment passed by this Court in S.J.C. Nos. 2 to 8 of 1989. The Tribunal after referring to the observations made by this Court and the Full Bench of the Tribunal earlier held, inter alia, as follows :

"In all the impugned orders of the Assistant Commissioner of Sales Tax there is reference to one or more of these enquiries. The impugned orders, however, indicate that in spite of these enquiries, no point has been added to the State's contention that branch transfers claimed by the assessee are in the nature of inter-State sales.

On the other hand, in all these impugned orders, the learned Assistant Commissioner of Sales Tax has outlined at length why the branch transfer claims should be allowed in favour of the assessee, none of which is assailed by the revenue on the merit of evidentiary date. The learned S.R. again and again refers to the text of the letters of Coal India Limited without simultaneously offering proof as to how goods, moved from Orissa to magazines outside the State pursuant to these letters as required by the honourable High Court. In the circumstances, and in contrast to the position espoused by the State, the reasoned position accepted by the learned Assistant Commissioner of Sales Tax in the impugned orders, particularly in respect of the question of branch transfers is objective, being based on materials produced by the assessee under the direction of the honourable court.

That besides, the honourable High Court of Orissa in S.J.Cs. Nos. 2 to 8 of 1989 dated February 11, 1992 referred to at paragraph 6(a) (supra) have found that the assessee furnished materials available with it and materials collected from other sources to show that transactions of stock transfer made to the consignment agent are not inter-State sales, but are transfer of goods otherwise than by way of sale. The Sales Tax Tribunal in their order dated January 30, 1995 referred to at paragraph 6(b) (supra) has accepted the transaction of stock transfer to consignment agents outside Orissa during the year 1989-90 and not as inter-State sales. The Assistant Commissioner of Sales Tax in all the orders for the years 1976-77, 1977-78 to 1983-84 and 1990-91 vide his orders dated October 30, 1995, January 12, 1996, and April 29, 1995 has also held such transaction not to be inter-State sales. The assessing officer in his order dated March 31, 1995 for the year 1991-92 has also held such stock transfer not to be inter-State sales. The Andhra Pradesh Sales Tax Appellate Tribunal as well as the High Court of A.P. under analogous facts and circumstances have held the assessee's stock transfer for the year 1978-79 in respect of its Hyderabad transaction not to be inter-State sales. With so many independent findings by different authorities on the question of stock transfer during the ten individual years of business, there is no scope to hold contrary view in this regard."

6. At this juncture it would be appropriate to quote concluding observations of this Court and the Full Bench of the Tribunal. They read as follows :

High Court :

"There is no dispute that goods moved from one State to the other and were sold to the collieries. Dr. Pal is correct in his submission that the assessing authorities have not given any finding that goods moved out of Orissa on the basis of any contract of sale. There is dispute as to whether the requisitions sent by the collieries to the consignment agents are the contracts of sale or the letters of Coal India Limited to the assessee accepting its quotation and indicating the quantities to be supplied and the rate at which they are to be supplied are contract of sale.....

On interpretation of the letters of Coal India Limited, it is clear that the supplies were to be made on the basis of these letters. However, it is not clear if the goods moved from Orissa to Magazines out of the State on the basis of these letters. Dr. Pal is not correct that the letters are merely rate contract. Assessing officer is to examine the term of the letters relating to insurance when the goods moved from Orissa to find out who bears the charges. It is also to be examined if on account of diversion of the goods before it is supplied to the collieries, there would be breach of contract. Assessee should be called upon to produce materials, if any, with it in these respect and assessing authorities can also collect informations from the collieries concerned in this regard to get a clear picture of nature of the transactions. Therefore, while I accept that Tribunal was correct in setting aside the orders of assessment, I am not able to accept the finding that on materials available, there is scope for finding that the transactions

constitute inter-State sales,"

Tribunal :

".....It is a fact that in response to the quotations called for Coal India Ltd., Calcutta advised I.D.L. Chemicals Ltd., for supply of the goods to the different collieries as per their indent. It is clear from the letter that collieries situated in different areas have to place their indents separately to the assessee as per their requirements as and when occasion arises. The letter of Coal India Ltd., indicates nothing more than the quoted prices agreed upon and other terms. The prices of explosives and detonators and accessories are formed for the contract period, but in case of any reduction in prices for non-permitted explosives and accessories, the D.G.S.R.S.D. rate contract will be applicable. It is pertinent to point out here that other purchasers are also entitled to purchase from out of the stocks available in the magazines with the commission agents. From the nature of indents and the nature of transactions finalised, the fact remains that the sales have occurred outside the State of Orissa. The letter of Coal India Ltd., indicates only to the extent of fixing up terms subject to which supplies have to be made to collieries under the control of Coal India Ltd., on placing indents by the concerned coal fields of the area outside the State of Orissa. The contract of sale from the facts available have been concluded only as and when an indent is placed by the actual customers. From the nature of transfer of stock of goods made by the manufacturing assessee, it is clear there is no evidence linking the movement of the impugned goods to the magazines outside the State having any organic link with a concluded sale prior to the transfer of goods. The letter of Western Coal Field dated September 5, 1992 indicates only allotment of monthly requirements of explosives and accessories to different areas and nothing more. The event of actual purchases and sale is triggered only after a colliery places indent with I.D.L. Chemicals Ltd., by which time the stocks are already in position at the shelves of the magazines of the commission agents outside the State. Procedure with regard to the payment also comes into play after the event sale transaction has been completed. Hence, the methodology of payments is not germane to the issue whether a particular sale can be brought within the purviews of inter-State sales. Indication of specific items of goods, specific quantity of materials, specific period of supply with value quoted is indicative of only a methodology adopted for material management and we do not find any specific reason to come to a finding that these are essential ingredients to bring into the ambit of particular movement of goods in pursuance of pre-existing contract of sale. From the way-bills also it is seen that movement of goods has no relationship or link with any pre-existing contract of sale. This being the position, we have no hesitation to hold that the goods under the transaction have moved from Rourkela to the magazines outside the State without any basis of a contract of sale. In this particular transfer, we do find that there is unfettered scope for the dealer-assessee for diversion of goods in movement without committing a breach of contract. The lower forums have not succeeded in bringing on record any evidence substantiating the claim that the goods moved

out of Orissa on the basis of any pre-existing contract. Hence, we are unable to sustain disallowance of deduction on account of branch transfer by the dealer-assessee. The claims of branch transfer is, therefore, allowed....."

7. So far as the second issue is concerned, the Tribunal endorsed the view expressed earlier by the Full Bench and held that the Assistant Commissioner was justified in allowing the deduction. On going through the order placed by the Coal India Ltd., the Tribunal found that the contract was ex-Rourkela, transit risk and insurance is on the buyer and the transportation charges were charged separately. It also found that the seller's bill and invoices indicated that the cost of freight was charged separately from the price of the goods. This clearly showed that there were two contracts, i.e., one for sale of goods and the other for their transportation.

8. So far as third issue is concerned, the Tribunal found that the Assistant Commissioner on examination of the materials available on record categorically observed that the assessee had sought for adjournment of the cases on each date of posting on the ground that the wanting declaration forms could not be procured in spite of best efforts. But the petition dated December 20, 1993 was not accepted and no further opportunity was allowed. The Tribunal indicated that the number of adjournments is not material and what is material is whether the assessee had indicated sufficient reasons for seeking adjournment. Some of the declaration forms were found to have been issued by the concerned sales tax authorities to the purchasing dealers in February, 1994, that is after the date of assessment. This according to the Assistant Commissioner indicated that the assessee was prevented by sufficient cause from producing the declaration forms. Accordingly direction was given for acceptance of declaration forms. The Tribunal found the reasoning to be proper and declined to interfere with the order.

The other part of the third issue related to the challenge made by the State regarding giving opportunity by the Assistant Commissioner for production of connected documents in support of claim of export sales. The Tribunal indicated that the Assistant Commissioner found the dealer to have originally returned export sale worth Rs. 14,66,921 whereas at the assessment stage, the assessee claimed such sales to the extent of Rs. 31,85,333.24 and for the balance amount of Rs. 17,79,485.21 no revised return is available in the assessment record. As details of the claim of export sale are not ascertainable from the assessment record, the Assistant Commissioner directed the Sales Tax Officer for examination of the actual extent of export sales to foreign countries either u/s 5(1) or u/s 5(3) of the Central Act, with a direction to allow an opportunity to the assessee for production of necessary documents in support of the claim of exemption. The Tribunal found that no illegality was committed. In the ultimate conclusion, the appeals filed by the Revenue were dismissed and orders passed by the Assistant Commissioner were confirmed.

9. So far as the appeals filed by the assessee are concerned, they were allowed and the impugned orders of the Assistant Commissioner stood modified by

deleting the direction for further enquiry and reassessment. It is to be noted that while the Chairman and the Judicial Member were of this view, the Accounts Member took a different view. According to him, the prayer for stock transfer was not acceptable and the transactions were to be treated as inter-State sale.

10. The Revenue as indicated above, moved the Tribunal u/s 24(1) of the Act for referring the following questions to this Court :

(i) Whether, on the facts and in the circumstances of the case, the honourable Tribunal in their majority opinion, is correct to hold that the transactions effected by the assessee are not in course of inter-State trade and commerce but stock transfer ?

(ii) Whether, in the facts and circumstances of the case, the honourable Tribunal in their majority opinion is correct to ignore the invoice raised by the consignment agents quoting the supply order of CIL (allocation order) which constitutes a distinguishing feature to make a conceivable link of despatch of such goods by the assessee to the consignment agents, to hold the despatch of goods as stock transfer ?

11. Tribunal was of the view on consideration of the materials available on record and keeping in view the direction given in S.J.C. Nos. 2 to 8 of 1989 dated February 11, 1992 as well as the order passed by the Tribunal in S.A. No. 83(C) of 1994-95 dated January 30, 1995 relating to assessment year 1989-90, decision was rendered. Therefore, on consideration of facts the conclusions were arrived at and no question of law arises.

12. Learned counsel for Revenue submitted that while the Tribunal was justified in saying that the decisions were rendered on consideration of factual position, the questions posed are mixed questions of fact and law.

13. Learned counsel for the assessee submitted that the question whether a decision has been rendered correctly cannot be adjudicated bereft of the factual aspects. By taking into account the factual aspects, the Tribunal had adjudicated the matter.

14. We find that the Tribunal has made a detailed analysis of the factual aspects and on consideration thereof has come to conclusions which are essentially factual. There is no infirmity in the factual conclusions arrived at. We have quoted the above conclusions/views of this Court, Full Bench of the Tribunal and relevant portions of the Tribunal's order while dealing with the issues involved in the present cases. At the cost of repetition, we may state that they are factual conclusions.

15. The scope and subject-matter of Sub-section (2) of Section 24 of the Act, is co-extensive with that of Sub-section (1), and High Court has no power or jurisdiction under Sub-section (2) to travel beyond the ambit of Sub-section (1), i.e., "any question of law arising out" of the Tribunal's order. [See *New Jehangir Vakil Mills Ltd. Vs. Commissioner of Income Tax, North, Kutch and Saurashtra*,].

Where the final determination of the issue rests on finding or ascertainment of basic facts and no principle of law is involved, an inference drawn is a question of fact. When the finding is one of fact, the fact that it is itself an inference from other basic facts will not alter its character as one of fact. [See Commissioner of Income Tax (Central), Calcutta Vs. Daulatram Rawatmull,]. In the instant case, certain factual conclusions arrived at by the Tribunal need to be noted. They are as follows :

"In this connection, the methodology adopted by the assessee needs to be mentioned here. It is a manufacturer of standard items of explosives. It has got consignment agents throughout the country for marketing its products who have got approved magazines duly licensed under the Explosives Act and held the explosives in their magazines on behalf of IDL as the property of the IDL. Explosives are transferred in bulk quantity from Rourkela to the consignments agents supported by a delivery order and gate pass required for excisable goods. The consignment agents make entry of the stock received by way of stock transfer. Such consignment agent submits report of receipt and disposal of stock in weekly statement to the assessee. Stocks are found to have been sold to collieries as well as to other customers. The goods have been despatched by the assessee as its own goods to be taken delivery and dealt with by the consignment agent in accordance with the local demand for such goods. Transit insurance from factory to the magazines as well as stock stored in the magazines are paid by the assessee.

In the above background, it is seen that the consignment agents are all registered dealers under the respective State law and under the CST Act. They have got approved magazines under the control of each of them with licensed capacities and they have got their own establishment with staff employed by them. Explosives and accessories have been transferred in bulk quantities from time to time from Rourkela to the consignment agent. Each consignment is supported by a delivery order and gate pass as required for excisable goods issued in the name of the consignment agents. As and when the stock are received by the consignment agent by way of stock transfers, they enter them in the registers maintained by him. Statements showing receipt of stock transfers and disposal of each consignments received by the agents are supplied to the assessee in shape of weekly statements. As and when the consignment agent receives an indent from any coal field and/or subsidiary of public sector undertakings, the agent prepares invoices and delivery challan and sends the goods by a licensed van from magazines indicating the original order issued by the CIL and public sector undertakings and/or indent number. Neither indents are placed by the collieries on the assessee nor the stocks are transported in the name of any of the collieries. From the analysis of stock and the sale statement, it is found that stock received by way of branch transfers is not sold as such to collieries and stocks are never earmarked in the names of coal fields.....That apart, the Government of India in the Department of Explosives has issued two letters dated October 18, 1989 to the assessee relating to use of explosive vans

as explosive magazines with a direction to appoint consignment agents, who should store explosives in their magazines and supply it to the consumers as and when required failing which severe action leading to suspension/cancellation of licence would be taken.....From the above discussion it follows that the assessee has undertaken to supply explosives and accessories to CIL and public sector undertakings against indents placed by the collieries and subsidiary companies of the CIL and public sector undertakings at various places outside the State. Such types of contract cannot be treated either as a binding contract or an agreement to sell the goods mentioned therein. It is merely a standing order to supply goods as and when indented during the specified period and at the specified rates. Thus the movement of goods has no relationship or link with any pre-existing contract of sale....."

The Tribunal also took note of the decisions rendered by the Andhra Pradesh Sales Tax Appellate Tribunal and the Andhra Pradesh High Court under similar facts and circumstances in assessee's case for 1978-79 taking a view similar to that taken by it. That being the position, we are not inclined to entertain these applications which fail and are dismissed.

B.P. Das, J.—I agree.